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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)

Rules and Regulations Implementing)
the Telephone Consumer Protection)
Act of 1991)

CC Docket No. 92-90

GTE's COMMENTS IN SUPPORT OF U S WEST's
PETITION FOR CLARIFICATION
OR RECONSIDERATION

GTE Service Corporation and
its domestic affiliated
telephone, equipment
and service companies

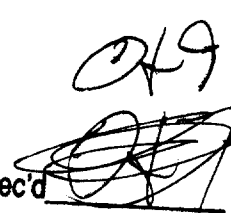
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January 4, 1993

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)
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GTE Service Corporation, on behalf of its domestic affiliated, telephone, equipment, and service companies ("GTE"), hereby submits the following Comments in Support of U S West's Petition For Clarification or Reconsideration filed November 23, 1992¹ and addressed to the Commission's Report and Order (the "October 16 Order"), FCC 92-443 released October 16, 1992, adopting specific Rules designed to implement the Telephone Consumer Protection Act of 1991 ("TCPA"), Public Law 102-243,

¹ U S West's Petition was listed on Report No. 1921 (Dec. 15, 1992), PETITIONS FOR RECONSIDERATION AND CLARIFICATION AND PETITION FOR STAY OF ACTIONS IN RULE MAKING PROCEEDINGS. The Petition was set for public comment by public notice in the Federal Register, 57 Fed. Reg. 60,202 (1992).

which added a new Section 227 to Title II of the Communications Act.²

DISCUSSION

GTE SUPPORTS U S WEST'S PETITION ASKING THAT A MESSAGE PROVIDER -- REGARDLESS OF WHETHER IT IS A "CARRIER" -- SHOULD NOT BE SUBJECT TO THE STATUTORY IDENTIFICATION REQUIREMENT OR OTHERWISE LIABLE UNDER TCPA OR THE FCC'S RULES.

One area in which GTE does business is selling systems or providing networks which forward voice or facsimile messages whereby GTE acts only as an intermediary. In so acting, GTE may be strictly within its "carrier" capacity and/or acting as an unregulated enhanced service provider. In any case, GTE has no knowledge of message content; its knowledge is limited to the point(s) to which the message is to be forwarded, as its function is limited to getting the message to such point(s). In asking for clarification, U S West's Petition (at 6) notes the "voice messaging provider is not responsible for its participation in delivering . . . a prerecorded or artificial voice message that does not comply with the TCPA or the Commission's rules." Similarly, U S West (*id.*) says: "[t]he Commission should provide the same kind of clarification with regard to facsimile platform/broadcast providers."

² By an Order released December 18, 1992, DA 92-1717 (Dec. 18, 1992), the Chief of the Common Carrier Bureau denied requests for Stay or Deferral of Effective Date of Certain Requirements of the October 16 Order. Thus, the October 16 Order generally became effective on December 20, 1992.

These services -- providing voice messaging and facsimile broadcast -- are very similar in that there is no feasible way to monitor every voice or facsimile message passing over a service provider's network. And this reality is not changed by whether the service provider is formally qualified under federal or state regulation as a common carrier."³ Under these circumstances, U S West's Petition (at 8) is correct in observing that the "'identification' that occurs (i.e., the [statutory] date/time identification, as well as the identification of the business or other entity 'sending' the facsimile message) is [of] the author of the message content and not an intermediate facsimile transport/broadcast provider." Footnote omitted. GTE supports U S West's position that a service provider -- whether operating as a carrier or non-carrier -- that is only a "middleman" sending the messages to their destination should not be held responsible for the content of such messages.

Accordingly: GTE joins U S West in suggesting to the Commission: (i) that the intent of the statute, is that "middleman" service providers, whether "carriers" or not, need

³ See NARUC v. FCC, 525 F.2d 630, 641-42 (D.C. Cir. 1976), cert. denied, 425 U.S. 992 (1976). The "holding out" standard has to do with the form of commercial relationship with a service provider's customers. A service provider that performs a pure intermediary function may deal with its customers on the basis of "individualized decisions, in particular cases, whether and on what terms to deal", and therefore not qualify as a "carrier." Id., 525 F.2d at 641, footnote omitted. Whether a service provider is recognized as a carrier at the state level will depend on the applicable provisions of state law.

not comply with the statutory identification requirement; and
(ii) proposed Rule Section 68.318(c) should clearly reflect this
intent, and (iii) mere "middlemen" should not be liable under the
TCPA or the Commission's rules for a transmission that does not
comply with the statute or the rules.

Respectfully submitted,

GTE Service Corporation and
its domestic affiliated
telephone, equipment
and service companies

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Certificate of Service

I, Ann D. Berkowitz, hereby certify that copies of the foregoing "GTE's Comments" have been mailed by first class United States mail, postage prepaid, on this 4th day of January, 1993 to all parties on the attached list.


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